

Notice of Allowability

Application No.

09/857,067

Examiner

Sabiha N. Qazi

Applicant(s)

NEIDLEIN ET AL.

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/18/04.
2. ☒ The allowed claim(s) is/are 1-6, 10, 12 and 14-18 (re-numbered as 1-13).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 4/9/04; 4/12/04 .
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Sabiha N. Qazi
Primary Examiner
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Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Jason D. Voight on 4/12/04. The application has been amended as follows:

1. Please delete "=" from the definition of R7 in claims 5 and 6 and insert "is a" (last 4th line before the formula VI).
2. Please delete "=" from the definition of R7 in claims 5 and 6 and insert "is not", (second last line of the paragraph before the formula VI).

Reasons for Allowance

Presently claimed invention is drawn to 3-(heterocyclyl)-benzoylpyrazoles derivatives, composition, process of making and their use for controlling undesired vegetation. Instant invention differs from the prior art of record in claiming a branched alkyl group, substituted at Nitrogen of the pyrazole ring.

1. The following is an examiner's statement of reasons for allowance:
2. Claims 1 to 6, 10, 12 and 14-18 (re-numbered as 1-13) are allowed.
3. The closest prior art is US Patent 5,846,907 (von Deyn et al.).
4. Declaration filed by Dr. Manthias C. Witschel on 4/25/2003 has been considered.

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Herbicidal action of the presently claimed compounds 2.2 and 2.3 (having a branched alkyl group) are compared with compounds A and B ((having straight chain alkyl group) of the prior art. The data on page 2 of the declaration clearly shows that branched alkyl group substituted at N of pyrazole ring is unexpectedly better than the compounds containing straight chain alkyl groups at the same position. This property was neither taught nor suggested by the prior art.

Examiner is thankful to Attorney Jason D. Voight and Herbert B. Keil for their cooperation during the prosecution of this application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha N. Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sabiha N. Qazi
Primary Examiner
Art Unit 1616